

353 N. CLARK STREET CHICAGO, IL 60654-3456

JENNER & BLOCK LLP

August 29, 2023

Joseph Torres
Tel +1 312 840 8685
JTorres@jenner.com

VIA ECF

Magistrate Judge Ona T. Wang
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: ***Disberry v. Emp. Relations Comm. of the Colgate-Palmolive Company, et al.***
Case No. 22-CV-5778

Dear Magistrate Judge Wang:

Pursuant to the Court's August 16, 2023 Order (ECF 96), Plaintiff Paula Disberry ("Plaintiff"), Defendant Employee Relations Committee of the Colgate-Palmolive Company (the "Committee"), and Defendant Alight Solutions, LLC ("Alight") (collectively, the "Parties") submit this joint proposed agenda for the upcoming status conference scheduled for September 5, 2023.

The Parties respectfully request that the Court permit the Parties to appear via teleconference or video conference.

1. Fact depositions: pursuant to the Parties' joint proposed schedule (ECF 97) and the Court's order (ECF 98), the following depositions have been scheduled:
 - a. September 13, 2023: deposition of Plaintiff
 - b. September 14, 2023: 30(b)(6) deposition of Alight
 - c. September 26, 2023: 30(b)(6) deposition of Committee
2. Request for in camera review of a document withheld by the Committee to determine whether the document is discoverable: Plaintiff requests in camera review of a document withheld by the Committee. The Committee and Plaintiff engaged in meet and confer efforts regarding this document, and the Committee consented to in camera review of this document. As reflected in the Committee's attached privilege log, the Committee asserts privilege based on attorney work product and subsequent remedial measures doctrines. Plaintiff contends that the attorney work product doctrine does not apply because the

August 29, 2023
Page 2

document was not created in anticipation of litigation, but instead was “prepared in the ordinary course of business or would have been created in essentially similar form irrespective of the litigation.” *Obeid v. La Mack*, No. 14 CV. 6498 LTS MHD, 2015 WL 5581577, at *3 (S.D.N.Y. Sept. 16, 2015). Furthermore, the author was an in-house attorney who advised the Committee on fiduciary functions, and “[a] beneficiary is entitled to inspect opinions of counsel procured by the [plan fiduciary] to guide him in the administration of the [plan].” *Martin v. Valley Nat. Bank of Arizona*, 140 F.R.D. 291, 322 (S.D.N.Y. 1991). In addition, although evidence of remedial measures is not admissible to prove culpability, “proof of such measures is admissible for a variety of other reasons, including showing ownership, control, or feasibility of precautionary measures, if controverted, or for impeachment purposes.” *Klosin v. E.I. Du Pont De Nemours & Co.*, No. 1:19-CV-00109 (EAW)(MJR), 2023 WL 2851704, at *3 (W.D.N.Y. Feb. 14, 2023), *report and recommendation adopted*, No. 1:19-CV-00109 (EAW), 2023 WL 2342288 (W.D.N.Y. Mar. 3, 2023). Thus, the document is discoverable because it is “reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

The Committee and Plaintiff met and conferred regarding the Committee’s assertion of privilege, but were unable to resolve the dispute. The Committee and the Plaintiff are amenable to in-camera review by the Court. Unless otherwise directed by the Court, counsel for the Committee will enclose the document at issue in a letter addressed to Judge Wang, and copy all counsel of record without the enclosure.

3. Agreed joint request to extend case schedule:

	Current Deadline	Proposed Deadline
Discovery Period Closes	September 5, 2023	October 5, 2023
Dispositive Motions	October 3, 2023	November 9, 2023
Responses to Dispositive Motions	October 24, 2023	November 30, 2023
Replies in Support of Dispositive Motions	November 3, 2023	December 11, 2023
Joint Pre-trial Motions	October 3, 2023	November 9, 2023

August 29, 2023

Page 3

Respectfully Submitted,

/s/ Joseph J. Torres

Joseph Torres

cc: All Counsel of Record (via ECF)